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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Mattias Johansson et al.

Serial No.: 10/091,889

Group Art Unit: 3682

Filed: March 5, 2002

Examiner: Hansen, Colby M.

For: Adjustable Pedal Assembly

Attorney Docket No.: 65,748-753

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Subsequent to the filing of the Notice of Appeal on September 2, 2004, Applicant now submits a brief in support of the appeal. This Appeal Brief is accompanied by the required fee under §41.20.

REAL PARTY IN INTEREST

The real party in interest in the subject Patent Application is Technology Holding Company, the assignee of all right and interest in the application.

RELATED APPEALS OR INTERFERENCES

The parent of the subject patent application, which is U.S. Patent No. 6,374,695, and another related patent, which is U.S. Patent No. 6,305,239, were involved in a patent

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infringement suit filed on November 18, 2002 in the U.S. District Court for the Eastern District of Michigan, docket no. 02-74586. A copy of the complaint is attached at Exhibit 1 in the Related Proceedings Appendix. In particular, Count II of the complaint alleged infringement of the '239 Patent and Count III of the complaint alleged infringement of the '695 Patent.

On August 11, 2003, Counts II and III were dismissed from the infringement suit due to the discovery of French Patent No. 2 739 947, also known as the French Patent or the Urset Patent. A copy of the Stipulation and Order for Dismissal is attached at Exhibit 2 in the Related Proceedings Appendix.

The claims of the subject patent application are patentably distinct from the claims of the '239 and '695 Patents. As such, the dismissal of the '239 and '695 Patents do not affect the validity and patentability of the claims now pending in the subject patent application.

Count I of the infringement suit involves U.S. Patent No. 6,237,565, which is unrelated to the subject patent application. Count I is currently on appeal with the U.S. Court of Appeals for the Federal Circuit.

STATUS OF CLAIMS

Claims 26-50 are pending in the subject patent application and claims 26-50 are being appealed. Claims 26-50 stand finally rejected under 35 USC § 103(a).

STATUS OF AMENDMENTS

A Request for Reconsideration was filed after the final rejection on July 27, 2004. The claims were not amended in this Request for Reconsideration. The Examiner considered the Request for Reconsideration but determined that the Request did not place the application in condition for allowance.

SUMMARY OF CLAIMED SUBJECT MATTER

Each of the independent claims, which are claims 26, 36, and 42, require an adjustable

pedal assembly having at least the following subject matter:

- a mounting arrangement (1, 2, 3) for attachment to a vehicle structure (37),
- a pedal (6, 7, 8) pivotally supported about a first pivot axis (9) between rest and applied positions,
- an adjustment element (5) pivotally supported on the mounting arrangement (1, 2, 3) about a second pivot axis (4),
- the second pivot axis (4) remains fixed relative to the mounting arrangement (1, 2, 3) as the adjustment element (5) pivotally moves between various adjusted positions,
- the first pivot axis (9) supporting the pedal (6, 7, 8) on the adjustment element (5),
- the adjustment element (5) selectively moving the pedal (6, 7, 8) between a plurality of operable positions without pivotally rotating the pedal (6, 7, 8) about the first pivot axis (9),
- the first pivot axis (9) being generally parallel to the second pivot axis (4),
- an electrical generator (or electric output control) responsive to rotation of the pedal (6, 7, 8) as the pedal rotates between the rest and applied positions about the first pivot axis (9), and
- the rotation of the pedal (6, 7, 8) between the rest and applied positions being independent of the movement of the pedal (6, 7, 8) between the operable positions by the adjustment element (5).

Further, independent claims 26 and 36 also require;

- a drive mechanism operably connected to the adjustment element (5) for rotating the adjustment element (5), the pedal (6, 7, 8) and the first pivot axis (9) about the second pivot axis (4) between the various adjusted positions.

The mounting arrangement 1, 2, 3 for attachment to a vehicle structure 37 is discussed on page 3, lines 10-20 of the specification. The mounting arrangement 1, 2, 3 defines a pivot axis 4, which is claimed as a second pivot axis 4. Page 3, lines 21-24 of the specification discusses an adjustment element 5 pivotally supported on the mounting arrangement (1, 2, 3) about the second pivot axis 4. As stated on Page 4, lines 3-6, a plurality of pedals 6, 7, 8 are pivotally supported on the adjustment element 5 and pivotal around a common pivot axis 9, which is claimed as a first pivot axis 9. The two pivot axes 4, 9 are essentially parallel to each other.

As shown in Figure 3 and as discussed at page 4, lines 19-31, the adjustment element 5 selectively moves the pedals 6, 7, 8 between a plurality of fore and aft operable positions (solid and dashed lines) without pivotally rotating the pedals 6, 7, 8 between rest and applied positions about the first pivot axis 9. As also shown in Figure 3 and as discussed at page 5, lines 26-33, and page 6, lines 8-10 , the second pivot axis 4 of the adjustment element 5 remains fixed relative to the mounting arrangement (1, 2, 3) during the movement of the pedals 6, 7, 8 between the operable positions. Hence, the rotation of the pedals 6, 7, 8 between the fore and aft rest and applied positions about the first pivot axis 9 is independent of the movement of the pedals 6, 7, 8 between the fore and aft operable positions by the adjustment element 5 about the second pivot axis 4.

As discussed on page 5, lines 8-25, a drive mechanism is operably connected to the adjustment element 5 for rotating the adjustment element 5, the pedals 6, 7, 8, and the first pivot axis 9 about the second pivot axis 4. In particular, the drive mechanism rotates the adjustment element 5, pedals 6, 7, 8, and first pivot axis 9 between various adjusted positions for moving the pedals 6, 7, 8 between the plurality of fore and aft operable positions.

An electrical generator (or electric output control) 36 is discussed at page 6, lines 22-29. The electrical generator 36 is responsive to rotation of at least one of the pedals 6, 7, 8 (preferably the accelerator pedal 6) as the pedal 6, 7, 8 rotates between the rest and applied positions about the first pivot axis 9. The electrical generator 36 in turn emits an electric signal that is dependent on the position of the pedal 6, 7, 8 around the first pivot axis 9.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 26-50 stand finally rejected under 35 USC §103(a) as being unpatentable over Huff et al. (United States Patent No. 2,860,720) in view of the French Patent (French Patent No. 2 739 947).

ARGUMENT

I. The Examiner's Position:

As set forth above, claims 26 - 50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huff et al. in view of the French Patent. In particular, the Examiner believes it would have been obvious to one of ordinary skill in the art to have utilized an electric signal generator as disclosed in the French Patent "between the pedals and support structures of Huff et al.". The Examiner states that the motivation for this combination is that "the use of a modular mounting structure of accelerator, brake, and/or clutch electric actuators would make for easier production, in terms of less labor, with a reduction in parts." The Examiner also states "that the need for the linkage 66 and parts connected beyond (i.e. master cylinder, etc.) would be superfluous (and detrimental to the overall function of the assembly) and therefor eliminated." The Examiner goes on to state that the combination of Huff et al. with the French Patent "would eliminate the linkage 66" such that the electrical signal actuator of the French Patent "would be pivotally fixed with respect to the adjustment means of Huff et al." and would "only pivot about its axis of rotation upon actuation by the driver."

Applicant respectfully disagrees with the Examiner regarding this obvious determination. Specifically, Applicant contends that this combination is improper and can not be made without violating the required standards of non-obviousness set forth in 35 U.S.C. § 103 and discussed in *Graham v. John Deere*, 383 U.S. 1, 86 S. Ct. 684, 15 L. Ed. 2d 545 (1966).

II. Conditions for Obviousness:

As the Board is well aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. See MPEP 2143. As a significant subset to the criterion related to suggestion or motivation to

modify the references, it is well settled that a proposed modification to a reference cannot render the reference unsatisfactory for its intended purpose. Further, the proposed modification cannot change the principle of operation of the reference. See MPEP 2143.01.

Finally, it is well-settled that parts of a prior art device cannot be discarded in order to formulate an obviousness rejection. With reference to the United States Court of Appeals case of *UARCO, Inc. v. Moore Business Forms, Inc.*, 440 F.2d 580, 169 U.S.P.Q. 263 (1971), the appeals court reiterated the stated law that portions of a prior device cannot be discarded in order to formulate an obviousness rejection.

III. The Improper Combination:

A. Unsatisfactory for Its Intended Purpose/Changing Principle Operation

Many of the prior art adjustable pedal assemblies, such as those found in Huff et al., do not disclose or suggest the incorporation of an electrical generator. Combining the French Patent with Huff et al. in an attempt to find the limitations set forth in independent claims 26, 36, and 42 requires a significant and improper modification of Huff et al. thereby evidencing an improper motivation to combine.

In particular, Applicant contends that combining the French Patent with Huff et al. would render Huff et al. unsatisfactory for its intended purpose and, in fact, would render Huff et al. wholly inoperable. Applicant also contends that the principle operation of Huff et al. would be changed if the French Patent was combined with Huff et al. As such, Applicant contends that there is no suggestion or motivation to modify Huff et al. and there is no suggestion or motivation to combine the French Patent with Huff et al. such that the subject invention in NOT obvious.

In order to demonstrate the operation of Huff et al., the improper modification that would render Huff et al. inoperable, and the improper motivation to combine, applicant refers the Board to the following;

- The Huff et al. patent - U.S. Patent No. 2,860,720 (Exhibit 1 in the

Evidence Appendix),

- A Declaration under 37 CFR § 1.132 by the inventor Mattias Johansson (Exhibit 2 in the Evidence Appendix),
- A Declaration under 37 CFR § 1.132 by an independent expert Clark Radcliff (Exhibit 3 in the Evidence Appendix), and
- An animation of Huff et al. (Exhibit 4 in the Evidence Appendix).[1]

Each of these Exhibits were submitted to the Examiner during prosecution of the subject application.

As shown in the solid/phantom lines in Figures 1 - 2 of the Huff et al. patent (Exhibit 1), Huff et al. discloses an adjustable pedal assembly having an accelerator pedal 62 and a brake pedal 60 that pivot about respective pivot axes 64. Each of the pivot axes 64 are analogous to the first pivot axis of the subject invention. Linkages (actuation rods) 66 are connected to the accelerator 62 and brake 60 pedals for actuating a throttle control and braking device, respectively, during the pivoting of the pedals 62, 60 about the pivot axes 64. Huff et al. also includes an adjustment element 42 for moving the pedals 62, 60 between fore and aft operative positions. The adjustment element 42 is in the form of a foot plate and pivots about a pivot axis 48. The pivot axis 48 is analogous to the second pivot axis of the subject invention. This undisputed interpretation of Huff et al. is confirmed by the inventor, see the Johansson Declaration (Exhibit 2) at paragraph 5, and by the independent expert, see the Radcliff Declaration (Exhibit 3) at paragraph 5.

The pedals 62, 60 of Huff et al. are adjustable between fore and aft positions in a like manner that vehicle seats are adjustable in fore and aft positions. During the adjustment of the pedals 62, 60 between the fore and aft positions, Huff et al. **requires that both the accelerator 62 and brake 60 pedals pivot about their respective pivot axes 64**. The pivoting of the pedals 62, 60 is necessary to ensure that the pedals 62, 60 will not actuate respective linkages 66 during adjustment. The animation of Huff et al. (Exhibit 4) is included to graphically demonstrate the importance of pivoting the pedals 62, 60 during the fore and aft

[1] Media Player files are also included. These files may be installed if the Board is unable to read/play the animation.

adjustment of the pedals 62, 60.

Referring to the animation, this animation clearly illustrates the movement of the linkages during fore and aft adjustment of the pedals **if the pedals did NOT pivot**. In other words, the animation demonstrates the opposite of the actual operation of Huff et al. The animation is being used for demonstration purposes and the following is a description of the animation.[2] The animation is sixty-one seconds long and begins with a perspective view of the adjustable pedal assembly of Huff et al. The animation then proceeds into a colored side view of the adjustable pedal assembly. The animation transitions into an enlarged view of the pedals and the accelerator pedal is pivoted about its respective pivot axis, which moves the associated linkage. The animation returns to the colored side view and illustrates the adjustment of the pedals by moving the adjustment element. During this adjustment, the pedals are NOT pivoted, such that the linkages move with the pedals and the adjustment element. As discussed above, the movement of the linkages would certainly actuate the respective throttle control and braking device. The animation then concludes. To reiterate once again, the movement of the linkages 66, as shown in the animation, would cause the vehicle to accelerate, brake, or do both during the fore and aft adjustment of the pedals 62, 60. This interpretation of the animation of Huff et al. is confirmed by the inventor, see the Johansson Declaration (Exhibit 2) at paragraph 8, and by the independent expert, see the Radcliff Declaration (Exhibit 3) at paragraph 8.

As stated above and reinforced by the animation, the linkages 66 cannot move during the adjustment of the pedals 62, 60. If the linkages 66 did move, then the vehicle would accelerate, brake, or do both during the adjustment of the pedals 62, 60. It is obviously undesirable to have the vehicle accelerate and/or brake while the pedals 62, 60 adjust between the fore and aft positions. Hence, the pedals 62, 60 of Huff et al. must pivot about their respective pivot axes 64 during adjustment between the fore and aft positions to ensure that the

[2] Claim language is also illustrated in the animation. This claim language does NOT correlate to the claim language of the subject application and should be ignored.

linkages do not move during this adjustment. This operational interpretation of Huff et al. is confirmed by the inventor, see the Johansson Declaration (Exhibit 2) at paragraphs 6 - 7, and by the independent expert, see the Radcliff Declaration (Exhibit 3) at paragraphs 6 - 7.

As mentioned above, the Examiner contends that it would have been obvious to one of ordinary skill in the art to have utilized the electric signal generator of the French Patent "between the pedals and support structures of Huff et al.". Positioning an electrical generator, such as the one disclosed in the French Patent, to be responsive to one or more of the pedals 62, 60 of Huff et al. would render the adjustable pedal assembly of Huff et al. wholly inoperative, i.e., unsatisfactory for its intended purpose. Recall that the **pedals 62, 60 must pivot** about their respective pivot axes 64 during adjustment between the fore and aft operative positions. As such, the electrical generator, which would be mounted to the respective pivot axis 64, would sense the required pivoting of the pedals 62, 60 **during the adjustment of the pedals 62, 60** between the fore and aft operative positions. Hence, the vehicle would accelerate, brake, or do both during the adjustment of the pedals 62, 60. The pedals 62, 60 cannot be applied during adjustment in an adjustable pedal system in a vehicle. Having the vehicle accelerate, brake, or do both during the fore and aft adjustment of the pedals 62, 60 clearly renders the adjustable pedal assembly of Huff et al. unsatisfactory for its intended purpose and likewise renders this adjustable pedal assembly wholly inoperative. This interpretation of Huff et al. is further confirmed by the inventor, see the Johansson Declaration (Exhibit 2) at paragraph 9, and by the independent expert, see the Radcliff Declaration (Exhibit 3) at paragraphs 9-10.

Further, as described above, the proposed modification (placing an electrical generator on Huff et al.) cannot change the principle of operation of Huff et al. One principle operation of Huff et al. is having the pedals 62, 60 pivot during fore and aft adjustment. This is a critical and principal operation of the adjustable pedal assembly of Huff et al., which *cannot be changed even if the linkage 66 was eliminated* from Huff et al. Hence, the Examiner cannot properly argue that the pedals 62, 60 don't have to pivot during fore

and aft adjustment. The pedals 62, 60 are required to pivot and this design feature cannot be changed. To reiterate again, **even if the linkage 66 of Huff et al. is removed**, the **pedals 62, 60 must still pivot during fore and aft adjustment** because that is the principal operation of the adjustable pedal assembly of Huff et al. Accordingly, if an electronic generator was placed onto the pedals 62, 60 of Huff et al., the electronic generator would sense a signal during the adjustment of pedals 62, 60, which would accelerate and/or brake the vehicle during adjustment. Again, applying the brakes by moving the pedal during adjustment is acceptable.

In summary, the Examiner cannot alter the principal operation of the adjustable pedal assembly of Huff et al. and cannot render the adjustable pedal assembly of Huff et al. unsatisfactory for its intended purpose such that the current obviousness rejections must be withdrawn.

B. Discarding Critical Parts of the Prior Art

The Examiner concedes that the linkage and the operation of pivoting of the pedal during adjustment as set forth in Huff et al. is "detrimental to the overall function of the assembly" if an electric signal generator is used on the adjustable pedal assembly of Huff et al. Irrespective of this finding, the Examiner disregards (eliminates) the linkage of Huff et al. and associated operation and grossly simplifies the combination of features for the subject invention. With this simplification, the Examiner jumps to an obviousness conclusion.

As stated above, it is well-settled that parts of a prior art device (such as the linkage and operation of the adjustable pedal assembly in Huff et al.) cannot be discarded in order to formulate an obviousness rejection. With reference to the United States Court of Appeals case of *UARCO, Inc. v. Moore Business Forms, Inc.*, 440 F.2d 580, 169 U.S.P.Q. 263 (1971), the appeals court reiterated the stated law that portions of a prior device cannot be discarded in order to formulate an obviousness rejection. In particular, the *UARCO* case focused on the issue of using multiple references in an obviousness rejection where some features of the prior art references must be eliminated in order to make the combination. The patent in question

(the '799 patent) was argued to be invalid based on obviousness in light of two prior art patents (the '886 and '971 patents). The claims of the '799 patent cover a series of sealed stuffed envelopes with attached inserts. The key to the claims is that there was a single tear strip to hold the insert in place. The '886 patent disclosed a similar series of sealed stuffed envelopes with inserts. However, the inserts were attached to the envelopes at four sides such that four tear strips were required. The idea of a single tear strip, however, was known by the '971 patent. The '971 patent disclosed a single envelope with an insert that was held in place by a single tear strip. As such, it was argued that it would be obvious to combine the '886 patent with the '971 patent to find all the features of the '799 patent. In analyzing this obviousness challenge, the court looked closely at the prior art (the '886 and '971 patents) to determine if any features had to be discarded during that combination. In particular, the court found that the insert sheet of the '886 patent had to be discarded and replaced with a different shaped insert similar to the one found in the '799 patent. Regarding the '971 patent, the court found that the single envelope had to be replaced with a series of envelopes. The court then concluded;

> We have stated that where the parts of the prior art device must be discarded in order to get to the patented invention, then such art does not make the invention obvious under the provisions of 35 U.S.C. § 103. *Ortman v. Maass*, 7, 391 F.2d 677 (7th Cir. 1968).

Accordingly, the court reasoned that parts of the prior art designs cannot be removed in order to formulate an obviousness combination.

Turning to the subject rejection, the Examiner is attempting to remove not only the linkage in Huff et al. but also the principal operation of the pedals in Huff et al., i.e., the pivoting of the pedals during fore and aft adjustment. Hence, the Examiner is discarding two features of the adjustable pedal assembly of Huff et al. in order to formulate the obviousness rejection. In response to Applicant's arguments and the *UARCO* case, the Examiner (in an Advisory Action) states the following;

> [w]ith regard to UARCO, inc. v. Moore Businness [*sic*] Forms, Inc. 440 F.2d 580, 169 USPQ 263 the ruling was based on the fact the

> discarding of the non-essential part altered the essential part to function differently than originally disclosed.

Applicant does not necessarily disagree with the Examiner's summarization of the *UARCO* case. However, the Examiner apparently believes that this summarization does not apply to the obviousness rejection at hand. This is where the Examiner is mistaken.

According to stated law as set forth in the *UARCO* case and as summarized by the Examiner, the discarding of the non-essential part (the linkage 66 in Huff et al.) altered the essential part (the pedals 62, 60 in Huff et al.) to function differently (NOT pivot during fore and aft adjustment) than originally disclosed. Hence, the Examiner's summary supports Applicant's position that the discarding of the linkage and/or associated operation in Huff et al. is improper when formulating an obviousness rejection such that the current obviousness rejections must be withdrawn.

IV. The Examiner's Confusion:

The Examiner is simplifying the claimed combination of elements by inserting components (electrical generator) into a prior art assembly (Huff et al.) while discarding other components (linkage and required pivoting) of the same prior art assembly (Huff et al.) in an attempt to justify an obviousness rejection. The Examiner has yet to address how the electrical generator of the French Patent can be incorporated into the pedal assembly of Huff et al., without discarding the linkage and the required pivoting of the pedal. In fact, the Examiner has yet to adequately address Applicant's argument to this point. The Examiner merely concludes that the linkage is no longer necessary and that because the pivoting of the pedal would be detrimental, then this pivoting operation is likewise not necessary. As repeatedly set forth above, components of a prior art assembly cannot be simply discarded. There is no suggestion in the references to discard such components. The fact that these components and operation must be discarded, and would otherwise render the combined assembly inoperable, is a clear indication of nonobviousness.

The Examiner has mailed three Official Actions, granted one Interview, and mailed an Advisory Action in this case. In each of these communications, the Examiner has continuously failed to address the issues of 1) that the proposed modification to Huff et al. renders the adjustable pedal of Huff et al. unsatisfactory for its intended purpose, 2) that the proposed modification to Huff et al. changes the principle of operation of the adjustable pedal of Huff et al., and 3) that critical parts of the adjustable pedal assembly of Huff et al. are being discarded in order to formulate the obviousness rejection.

As further evidence of the Examiner's repeated confusion, the Examiner completely mischaracterizes Applicant's position by stating the following in the Advisory Action mailed on August 27, 2004;

> the linkage of Fr. -947 [the French Patent] is irrelevant as the only teaching being utilized is of a modular actuator. Applicant is improperly trying to modify Huff et al. with parts of Fr. -947 that are not meant to [*sic*] incorporated, thereby convoluting an otherwise straight forward rejection.

Applicant has never discussed or mentioned any linkage of the French Patent and in fact agrees with the Examiner that the French Patent only teaches of the use of a modular actuator (electronic generator). The Examiner is clearly confused and has yet to recognize that the Applicant is discussing the **linkage 66 of Huff et al.** It is the linkage 66 of Huff et al., and associated function, that the Examiner is inappropriately disregarding. Finally, the Examiner has failed to recognized that he has reinforced Applicant's position regarding the *UARCO* case by stating that the ruling was based on the fact that the discarding of the non-essential part (linkage) altered the essential part (pedals) to function differently (not pivot) than originally disclosed.

V. The Novel Combination of the Subject Invention:

In summary, the prior art of record fails to disclose, teach, or suggest the unique structure of the subject invention as claimed in each of the independent claims. In particular, the prior art fails to disclose the novel and non-obvious combination of an adjustable pedal assembly having:

- a pedal pivotally supported about a first pivot axis,
- an adjustment element pivotally supported about a second pivot axis,
- the first pivot axis supporting the pedal on the adjustment element,
- the adjustment element selectively moving the pedal between a plurality of operable positions without pivotally rotating the pedal about the first pivot axis,
- the second pivot axis of the adjustment element remaining fixed during the movement of the pedal between the operable positions,
- an electrical generator (or electric output control) responsive to rotation of the pedal as the pedal rotates between rest and applied positions about the first pivot axis, and
- the rotation of the pedal between the rest and applied positions being independent of the movement of the pedal between the operable positions by the adjustment element.

In other words, the subject invention, as claimed, requires that an adjustment element move a pedal between a plurality of fore and aft operable positions *without pivotally rotating the pedal about a first pivot axis*. Also, the independent claims require that *the movement of the pedal* between operable positions by the adjustment element *be independent of the rotation of the pedal between rest and applied positions*. As such, the electrical generator of the subject invention does not sense any rotation of the pedal about the first pivot axis during the adjustment of the pedal about the second pivot axis. This creates a novel and non-obvious design improvement that is not found or suggested by the prior art of record, including the combination of Huff et al. and the French Patent. As such, the invention, as claimed in independent claims 26, 36, and 42, is believed to be novel and non-obvious over the prior art of record, either alone or in combination.

CLOSING

An obvious rejection using the prior art of record cannot be sustained against claims 26-50. It is respectfully submitted that the rejection of these claims under 35 USC §103(a) is improper. The Examiner's position in this rejection, which is wholly unsupported by the prior art cited, must be reversed.

Respectfully submitted,

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Date: November 1, 2004

CERTIFCATE OF MAILING

I hereby certify that the attached **Appeal Brief with Exhibits, check in amount of $340.00,** and **return post card** are being deposited in the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to **Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450** on **November 1, 2004.**

Brenda J. Hughes

CLAIMS APPENDIX

1. - 25. (Cancelled).

26. An adjustable pedal assembly comprising:

a mounting arrangement (1, 2, 3) for attachment to a vehicle structure (37);

at least one pedal (6, 7, or 8) having first and second ends and supported for pivotally moving about a first pivot axis (9) between rest and applied positions;

an adjustment element (5) pivotally supported on said mounting arrangement (1, 2, 3) about a second pivot axis (4) with said second pivot axis (4) remaining fixed relative to said mounting arrangement (1, 2, 3) as said adjustment element (5) pivotally moves between various adjusted positions;

said first pivot axis (9) supporting said first end of said pedal (6, 7, or 8) on said adjustment element (5) spaced from said second pivot axis (4) for pivotal movement relative to said adjustment element (5) with said first pivot axis (9) being generally parallel to said second pivot axis (4),

a drive mechanism operably connected to said adjustment element (5) for selectively rotating said adjustment element (5), said pedal (6, 7, or 8), and said first pivot axis (9) about said second pivot axis (4) between said various adjusted positions for selectively moving said pedal (6, 7, or 8) between a plurality of operable positions without pivotally moving said pedal (6, 7, or 8) about said first pivot axis (9) relative to said adjustment element (5); and

an electric signal generator responsive to pivotal movement of said pedal (6, 7, or 8) for electrically controlling a vehicle system in response to pivotal movement of said pedal (6, 7, or 8) about said first pivot axis (9) in a range between said rest and applied positions independently of said pedal (6, 7, or 8) moving between any one of said operable positions defined by said adjusted positions of said adjustment element (5) about said second pivot axis (4).

27. An assembly as set forth with claim 26 including a second pedal (6, 7, or 8) pivotally supported by said adjustment element (5) whereby said adjustment element (5) simultaneously adjusts the operational positions of both of said pedals.

28. An assembly as set forth in claim 26 wherein said electric signal generator is connected to said pedal (6, 7, or 8) and directly responsive to pivotal movement of said pedal (6, 7, or 8).

29. An assembly as set forth in claim 28 wherein said electric signal generator is further defined as a potentiometer (36) that emits an electric signal varying with the pivotal position of said pedal (6, 7, or 8) between said rest and applied positions about said first pivot axis (9).

30. An assembly as set forth in claim 28 wherein said at least one pedal (6, 7, or 8) includes an accelerator pedal (6) extending downwardly from said adjustment element (5) and terminating at an accelerator pedal pad (30).

31. An assembly as set forth in claim 30 wherein said adjustment element (5) adjusts an angular position of said accelerator pedal pad (30) when selectively rotated by said drive mechanism.

32. An assembly as set forth in claim 26 wherein said drive mechanism includes a gear assembly with a rotor element (12) that is driven by an electric motor (11).

33. An assembly as set forth in claim 26 wherein said second pivot axis (4) is located vertically above said first pivot axis (9).

34. An assembly as set forth in claim 33 wherein said adjustment element (5) maintains said first pivot axis (9) at a lower vertical position than said second pivot axis (4) at all adjusted positions.

35. An assembly as set forth in claim 26 wherein an angle formed between a connection line (35) extending between said first (9) and second (4) pivot axes and a vertical line (34) extending perpendicular to said second pivot axis (4) is in the range of 30° to 40°.

36. An adjustable pedal assembly comprising:

a mounting arrangement (1, 2, 3) for attachment to a vehicle structure (37);

a pedal (6, 7, or 8) pivotally supported about a first pivot axis (9) for rotation between rest and applied positions about said first pivot axis (9);

an adjustment element (5) pivotally supported on said mounting arrangement (1, 2, 3) about a second pivot axis (4) with said second pivot axis (4) remaining fixed relative to said mounting arrangement (1, 2, 3) as said adjustment element (5) pivotally moves between various adjusted positions;

said first pivot axis (9) supporting said pedal (6, 7, or 8) on said adjustment element (5) for pivotal rotation relative to said adjustment element (5) with said first pivot axis (9) being generally parallel to said second pivot axis (4),

a drive mechanism operably connected to said adjustment element (5) for selectively rotating said adjustment element (5), said pedal (6, 7, or 8), and said first pivot axis (9) about said second pivot axis (4) between said various adjusted positions for selectively moving said pedal (6, 7, or 8) between a plurality of operable positions without pivotally rotating said pedal (6, 7, or 8) about said first pivot axis (9) relative to said adjustment element (5); and

an electric output control operatively connected to said pedal (6, 7, or 8) and directly

responsive to pivotal rotation of said pedal (6, 7, or 8) about said first pivot axis (9) between said rest and applied positions for electrically controlling a vehicle system in response to pivotal rotation of said pedal (6, 7, or 8) independently of said pedal (6, 7, or 8) moving between any one of said operable positions defined by said adjusted positions of said adjustment element (5) about said second pivot axis (4).

37. An assembly as set forth in claim 36 wherein said pedal (6, 7, or 8) has first and second ends with said first end being mounted to said adjustment element (5) and said second end supporting a pedal pad (30, 31, or 32).

38. An assembly as set forth in claim 37 wherein said adjustment element (5) adjusts an angular position of said pedal pad (30, 31, or 32) when selectively rotated by said drive mechanism.

39. An assembly as set forth in claim 36 wherein said electric output control is further defined as a potentiometer (36) that emits an electric signal varying with the pivotal position of said pedal (6, 7, or 8) between said rest and applied positions about said first pivot axis (9).

40. An assembly as set forth in claim 36 wherein said second pivot axis (4) is located vertically above said first pivot axis (9).

41. An assembly as set forth in claim 40 wherein said adjustment element (5) maintains said first pivot axis (9) at a lower vertical position than said second pivot axis (4) at all adjusted positions.

42. An adjustable pedal assembly comprising:

a mounting arrangement (1, 2, 3) for attachment to a vehicle structure (37);

a pedal (6, 7, or 8) pivotally supported about a first pivot axis (9) with respect to said mounting arrangement (1, 2, 3) for rotation between rest and applied positions about said first pivot axis (9);

an adjustment element (5) pivotally supported about a second pivot axis (4) with respect to said mounting arrangement (1, 2, 3) with said second pivot axis (4) remaining fixed relative to said mounting arrangement (1, 2, 3) as said adjustment element (5) pivotally moves between various adjusted positions about said second pivot axis (4);

said first pivot axis (9) supporting said pedal (6, 7, or 8) on said adjustment element (5) with said adjustment element (5) selectively moving said pedal (6, 7, or 8) between a plurality of operable positions during said pivotal movement between said various adjusted positions about said second pivot axis (4) without pivotally rotating said pedal (6, 7, or 8) about said first pivot axis (9), said first pivot axis (9) being generally parallel to said second pivot axis (4); and

an electrical generator mounted adjacent said pedal (6, 7, or 8) and responsive to rotation of said pedal (6, 7, or 8) for emitting an electric signal that varies with said rotational position of said pedal (6, 7, or 8) between said rest and applied positions around said first pivot axis (9) independently of movement of said pedal (6, 7, or 8) between said plurality of operable positions defined by said adjusted positions of said adjustment element (5) about said second pivot axis (4).

43. An assembly as set forth in claim 42 wherein said pedal (6, 7, or 8) has first and second ends with said first end being mounted to said adjustment element (5) and said second end supporting a pedal pad (30, 31, or 32).

44. An assembly as set forth in claim 43 wherein said adjustment element (5) adjusts an angular position of said pedal pad (30, 31, or 32) during said movement between said

various adjusted positions.

45. An assembly as set forth in claim 42 wherein said electrical generator is further defined as a potentiometer (36) for emitting the electric signal that varies with said rotational position of said pedal (6, 7, or 8).

46. An assembly as set forth in claim 42 further including a drive mechanism operably connected to said adjustment element (5) for selectively rotating said adjustment element (5), said pedal (6, 7, or 8), and said first pivot axis (9) about said second pivot axis (4) between said various adjusted positions.

47. An assembly as set forth in claim 46 wherein said drive mechanism includes a gear assembly with a rotor element (12) that is driven by an electric motor (11).

48. An assembly as set forth in claim 42 wherein said second pivot axis (4) is located vertically above said first pivot axis (9).

49. An assembly as set forth in claim 48 wherein said adjustment element (5) maintains said first pivot axis (9) at a lower vertical position than said second pivot axis (4) at all adjusted positions.

50. An assembly as set forth in claim 42 wherein an angle formed between a connection line (35) extending between said first (9) and second (4) pivot axes and a vertical line (34) extending perpendicular to said second pivot axis (4) is in the range of 30° to 40°.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Mattias Johansson et al.

Serial No.: 10/091,889 Group Art Unit: 3682

Filed: March 5, 2002 Examiner: Hansen, Colby

For: ADJUSTABLE PEDAL ASSEMBLY

DECLARATION UNDER 37 C.F.R. § 1.132

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

I, Mattias Johansson, hereby state that:

1. I am a citizen of Sweden.

2. I am currently employed as a design engineer for Teleflex Automotive Sweden AB (Teleflex). I have worked in the field of vehicle pedals since __1996_____ and I have been employed by Teleflex since ____1996_____.

3. I am an inventor of the adjustable pedal assembly disclosed and claimed in the subject patent application, serial no. 10/091,889.

4. I am aware of, have read, and understand the adjustable pedal design disclosed in U.S. Patent No. 2,860,720 to Huff et al. (Huff et al.). From my reading of Huff et al., I also understand the operation of the adjustable pedal assembly disclosed therein.

5. As a result of my review and understanding of Huff et al., it is apparent that Huff et al. includes an accelerator pedal 62 and a brake pedal 60 that pivot about respective pivot axes 64. Actuation rods 66 are connected to the accelerator 62 and brake 60 pedals for actuating a throttle control and braking device, respectively, during the pivoting of the pedals 62, 60 about the pivot axes 64. Huff et al. also discloses an adjustment element 40, 42, in the form of a large floor plate, for moving the pedals 62, 60 between various operative positions.

6. It is well known in the automotive industry that rods or cables for the

accelerator or brake pedals cannot be actuated during the adjustment of these pedals. If these rods or cables are actuated, then the vehicle would accelerate, brake, or do both during the adjustment of the pedals, which is obviously an undesirable result.

7. The accelerator 62 and brake 60 pedals of Huff et al. pivot about their pivot axes 64 during the adjustment of the pedals 62, 60. In other words, the pedals 62, 60 pivot about the pivot axes 64 during adjustment such that the actuation rods 66 do not move during adjustment. Hence, the pivoting of the pedals 62, 60 during adjustment ensures that the pedals 62, 60 will not actuate a throttle control and/or a braking device of the vehicle.

8. I have also reviewed the animation of Huff et al. This animation accurately illustrates the movement of the actuation rods during the adjustment of the pedals if the pedals were not allowed to pivot about the pivot axes. If this type of operation were to occur, then the throttle control and/or brake device would be actuated during adjustment of the pedals. This animation further supports my position outlined in paragraph 7 that the pedals must pivot about the pivot axes during adjustment in order to prevent movement of the actuation rods and subsequent actuation of the throttle control and brake device.

9. As is also well known in the automotive industry, electronic signal generators sense any and all movement of a pedal about its pedal axis. The electronic signal generators then transmit this movement to the appropriate throttle control or brake device. If an electronic signal generator was placed on the pedal pivot axes 64 of Huff et al. and the pedals 62, 60 of Huff et al. still pivoted about the pivot axes 64 as discussed in paragraph 7, then the electrical generator would sense the pivoting of the pedals 62, 60 during the adjustment of the pedals 62, 60 between the operative positions. The vehicle would then accelerate, brake, or do both during the adjustment of the pedals 62, 60 thereby rending the adjustable pedal assembly disclosed in Huff et al. inoperable.

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information are believed to be true, and further that these statements were made with the knowledge that willful and false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity

of the application or patent issued thereon.

Respectfully submitted,

Dated: 2004-04-14

Mattias Johansson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Mattias Johansson et al	
		Group Art Unit: 3682
Serial No.:	10/091,889	
		Examiner: Hansen, Colby
Filed:	March 5, 2002	
For:	ADJUSTABLE PEDAL ASSEMBLY	
Attorney Docket No.:	65,748-753	

DECLARATION UNDER 37 C.F.R. § 1.132

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

I, Clark J. Radcliffe, hereby state that:

1. I am a citizen of the United States.

2. I have Bachelors and Masters of Science degrees in Mechanical Engineering from the University of California, Davis. I also have a Ph.D. in Mechanical Engineering from the University of California, Berkeley. I am currently employed as a Professor of Mechanical Engineering for Michigan State University (MSU) and have been employed by MSU since 1980.

3. I have, in the past, been deemed an expert in the area of adjustable pedals by the federal judicial system of the United States.

4. I am aware of, have read, and understand the adjustable pedal design disclosed in U.S. Patent No. 2,860,720 to Huff et al.(Huff et al.). From my reading of Huff et al. I also understand the operation of the adjustable pedal assembly disclosed therein.

5. As a result of my review and understanding of Huff et al., it is apparent that Huff et al. includes an accelerator pedal 62 and a brake pedal 60 that pivot about

respective pivot axes 64. Actuation rods 66 are connected to the accelerator 62 and brake 60 pedals for actuating a throttle control and braking device, respectively, during the pivoting of the pedals 62, 60 about the pivot axes 64. Huff et al. also discloses an adjustment element 40, 42, in the form of a large floor plate, for moving the pedals 62, 60 between various operative positions.

6. I am also aware that rods or cables for the accelerator or brake pedals cannot be actuated during the adjustment of these pedals. If these rods or cables are actuated, then the vehicle would accelerate, brake, or do both during the adjustment of the pedals, which is obviously an undesirable result.

7. The accelerator 62 and brake 60 pedals of Huff et al. therefore pivot about their pivot axes 64 during the adjustment of the pedals 62, 60. In other words, the pedals 62, 60 pivot about the pivot axes 64 during adjustment such that the actuation rods 66 do not move in a fore and aft direction during adjustment. Hence, the pivoting of the pedals 62, 60 about pivot axes 64 during adjustment ensures that the pedals 62, 60 will not actuate a throttle control and a braking device of the vehicle.

8. I have also reviewed the animation of Huff et al. This animation accurately illustrates the movement of the actuation rods during the adjustment of the pedals if the pedals were not allowed to pivot about the pivot axes. If this type of operation were to occur, then the actuation rods would be moved in a fore/aft direction, causing the throttle control and/or brake device to be actuated during adjustment of the pedals. This animation further supports my position outlined in paragraph 7 that the pedals pivot about the pivot axes during adjustment in order to prevent movement of the actuation rods and subsequent actuation of the throttle control and brake device.

9. Electronic signal generators, which I am also familiar with, sense any movement of a pedal about its pedal axis. The electronic signal generators then transmit this movement to the appropriate throttle control or brake device.

10. If an electronic signal generator was placed on the pedal pivot axes 64 of Huff et al., the electrical generator would sense the required pivoting of the pedals 62, 60 during the adjustment of the pedals 62, 60 between the operative positions. The vehicle would therefore accelerate, brake, or do both during the adjustment of the pedals 62, 60 thereby rending the adjustable pedal assembly disclosed in Huff et al. inoperative.

11. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information are believed to be true, and further that these statements were made with the knowledge that willful and false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or patent issued thereon.

Respectfully submitted,

Dated: April 14, 2004

Clark J. Radcliffe, Ph.D.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TELEFLEX INCORPORATED,

Plaintiff,

v.

KSR INTERNATIONAL CO.,

Defendant.

02-74586

JOHN FEIKENS
MAGISTRATE JUDGE

U.S. DIST. COURT
EAST DIST. MICH
DETROIT
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FILED

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STEVEN SUSSER (P52940)
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YOUNG & SUSSER, P.C. SUITE 305 WESTVIEW OFFICE CENTER, 26200 AMERICAN DRIVE, SOUTHFIELD, MICHIGAN 48034

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Teleflex Incorporated ("Teleflex"), by its attorneys, Young & Susser, P.C., and for its Amended Complaint against Defendant KSR International Co. ("KSR"), alleges as follows:

PARTIES

1. Teleflex is a Delaware corporation, having its principal place of business at 630 W. Germantown Pike, Plymouth Meeting, Pennsylvania 19462.

2. Upon information and belief, KSR is a Canadian corporation, having its principal place of business in Ridgetown, Ontario, and an office in this district located at 20300 Civic Center Drive, #330, Southfield, Michigan.

JURISDICTION

3. This is an action for patent infringement under Title 35, United States Code, §§ 271 et seq.

4. This Court has jurisdiction under 28 U.S.C. § 1338.

5. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I
INFRINGEMENT OF '565 PATENT

6. Teleflex incorporates the allegations of the foregoing Paragraphs 1-5 as though fully set forth herein.

7. On May 29, 2001, United States Patent No. 6,237,565, entitled "Adjustable Pedal Assembly With Electronic Throttle Control" ("the '565 Patent"), was duly and legally issued by the United States Patent and Trademark Office to Steven J. Engelgau. A copy of the '565 Patent is attached hereto as Exhibit A.

8. Teleflex is the current assignee of all right, title and interest in the '565 Patent, including the right to bring and maintain this action with respect to the '565 Patent.

9. KSR has made, used, offered for sale, and sold in the United States products infringing the '565 Patent and has otherwise committed acts prohibited by 35 U.S.C. § 271.

10. KSR continues to infringe the '565 Patent.

11. KSR's infringement is willful and intentional.

12. As a result of KSR's activities and infringement, Teleflex has suffered and will continue to suffer substantial damages.

13. KSR's infringement of the '565 Patent will continue unless and until enjoined by this Court.

YOUNG & SUSSER, P.C. SUITE 305 WESTVIEW OFFICE CENTER, 26200 AMERICAN DRIVE, SOUTHFIELD, MICHIGAN 48034 248-

COUNT II
INFRINGEMENT OF '239 PATENT

14. Teleflex incorporates the allegations of the foregoing Paragraphs 1-13 as though fully set forth herein.

15. On October 23, 2001, United States Patent No. 6,305,239 B1, entitled "adjustable pedal assembly" ("the '239 Patent") was duly and legally issued by the United Sates Patent and Trademark Office to Mattias Johansson and Gunnar Fornell. A copy of the '239 Patent is attached hereto as Exhibit B.

16. Teleflex is the current assignee as to all right, title and interest in the '239 Patent, including the right to bring and maintain this action with respect to the '239 Patent.

17. KSR has made, used, offered for sale, and sold in the United States products infringing the '239 Patent and has otherwise committed acts prohibited by 35 U.S.C. § 271.

18. KSR continues to infringe the '239 Patent.

19. KSR's infringement is willful and intentional.

20. As a result of KSR's activities and infringement, Teleflex has suffered and will continue to suffer substantial damages.

21. KSR's infringement of the '239 Patent will continue unless and until enjoined by this Court.

COUNT III
INFRINGEMENT OF '695 PATENT

22. Teleflex incorporates the allegations of the foregoing Paragraphs 1-21 as though fully set forth herein.

23. On April 23, 2002, United States Patent No. 6, 374,695, entitled "adjustable pedal assembly" ("the '695 Patent") was duly and legally issued by the United Sates Patent and Trademark Office to Mattias Johansson and Gunnar Fornell. A copy of the '695 Patent is attached hereto as Exhibit C.

24. Teleflex is the current assignee as to all right, title and interest in the '695 Patent, including the right to bring and maintain this action with respect to the '695 Patent.

25. KSR has made, used, offered for sale, and sold in the United States products infringing the '695 Patent and has otherwise committed acts prohibited by 35 U.S.C. § 271.

26. KSR continues to infringe the '695 Patent.

27. KSR's infringement is willful and intentional.

28. As a result of KSR's activities and infringement, Teleflex has suffered and will continue to suffer substantial damages.

29. KSR's infringement of the '695 Patent will continue unless and until enjoined by this Court.

WHEREFORE, Teleflex Incorporated requests that this Court enter Judgment that:

A. Declares that the '565, '239, and '695 Patents are valid and infringed by KSR;

B. declares KSR's infringement of the '565, '239, and '695 Patents has been knowing and willful;

C. awards Teleflex its damages caused by KSR's infringement of the '565, '239, and '695 Patents, trebled pursuant to 35 U.S.C. § 284;

D. finds this to be an exceptional case pursuant to 35 U.S.C. § 285 and awards Teleflex its attorneys' fees and costs incurred in this matter;

YOUNG & SUSSER, P.C. SUITE 305 WESTVIEW OFFICE CENTER. 26200 AMERICAN DRIVE. SOUTHFIELD, MICHIGAN 48034 248

E. permanently enjoins KSR and its subsidiaries, agents, officers, and employees, and all others acting in concert with it, from further infringement of the '565, 239, and '695 Patents under penalty of contempt; and,

F. awards to Teleflex such other and further equitable relief as the Court may deem necessary and proper to correct the injury to Teleflex and to the public interest caused by KSR's unlawful conduct.

YOUNG & SUSSER, P.C.

BY: _____

RODGER D. YOUNG (P22652)
STEVEN SUSSER (P52940)
DAVID J. POIRIER (P62928)
Attorneys for Plaintiff
26200 American Drive, Suite 305
Southfield, MI 48034
248.353.8620

Dated: November 18, 2002

YOUNG & SUSSER, P.C. SUITE 305 WESTVIEW OFFICE CENTER 26200 AMERICAN DRIVE SOUTHFIELD, MICHIGAN 48034 (248) 353 8620

FILED

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U.S. DISTRICT COURT
EASTERN DISTRICT
DETROIT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TELEFLEX INCORPORATED,

Plaintiff,

v.

KSR INTERNATIONAL CO.,

Defendant.

Case No. 02 74586

Hon. Lawrence P. Zatkoff

Magistrate Judge Pepe

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313.223.3500

STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE OF CLAIMS II AND III OF TELEFLEX'S SECOND AMENDED COMPLAINT

At a session of said Court, held in the Federal Courthouse, for the Eastern District of Michigan, located in the City of Detroit, County of Wayne, State of Michigan, on 11 AUG 2003

PRESENT: LAWRENCE P. ZATKOFF
United States District Judge

55

Plaintiff Teleflex Incorporated ("Teleflex") and non-party Technology Holding Company ("THC") having agreed to dismiss with prejudice United States Patent No. 6,305,239 ("the '239 Patent"), in light of French Patent Application No. 2,739,947 ("the Urset Patent"), and to dedicate the '239 Patent to the public under 35 U.S.C. § 253.

And Teleflex and THC having agreed to dismiss with prejudice United States Patent No. 6,374,695 ("the '695 Patent"), in light of the Urset Patent, and to dedicate the '695 Patent to the public under 35 U.S.C. § 253.

And in accordance with the stipulation to that effect, and the Court being otherwise fully advised in the premises;

IT IS ORDERED that Count II of Teleflex's Second Amended Complaint, relating to the '239 Patent, be dismissed with prejudice.

IT IS FURTHER ORDERED that Count III of Teleflex's Complaint, relating to the '695 Patent, be dismissed with prejudice.

IT IS FURTHER ORDERED that this Court makes no finding with respect to the validity or invalidity of the '239 Patent.

IT IS FURTHER ORDERED that this Court makes no finding with respect to the validity or invalidity of the '695 Patent.

IT IS FURTHER ORDERED that this Court makes no finding with respect to the infringement or non-infringement of the '239 Patent by any products manufactured, offered for sale, or sold by KSR International Co. ("KSR").

IT IS FURTHER ORDERED that this Court makes no finding with respect to the infringement or non-infringement of the '695 Patent by any products manufactured, offered for sale, or sold by KSR.

IT IS FURTHER ORDERED that the '239 Patent and the '695 Patent be and are dedicated to the public under 35 U.S.C. § 253.

United States District Court Judge

IT IS SO STIPULATED.

STEVEN SUSSER (P52940)
Young & Susser, P.C.
Counsel for Teleflex Incorporated and non-party Technology Holding Company
26200 American Drive, Suite 305
Southfield, MI 48034
248.353.8620

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